

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSEPH VIVIANI, *et. al.*,

Plaintiffs,

vs.

JAMES W. VAHEY, *et. al.*,

Defendants.

Case No. 2:10-cv-01445-LRH-GWF

ORDER

Motion for Extension and Motion for
Order to Serve by Publication (#13)

This matter is before the Court on Plaintiffs' *Ex Parte* Application to Extend Time for Service of Summons and Complaint and Motion for Order for Service by Publication (#13), filed December 23, 2010.

Pursuant to Fed.R.Civ.P. 4(e), service of summons by publication is governed by the state statutes of the state in which the District Court is located. Nevada Rule of Civil Procedure 4(e)(1)(i) states that the court may permit service by publication if, after due diligence shown, the plaintiffs are unable to find the defendant within the state or defendant is shown to be avoiding the service of summons. The plaintiffs must prove this to the satisfaction of the court either by affidavit or by a verified complaint. The question of due diligence is within the Court's discretion as there is no objective, formulaic standard for determining what is, or is not, due diligence under Nevada law. *Abreu v. Gilmer*, 985 P.2d 746, 749 (1999).

Plaintiffs have shown by their motion and affidavit that they have been unable to serve Defendant Mary Muso after numerous attempts at service at the address on record for her with the Clark County Assessor's Office. (#13). The Court finds that Plaintiffs have demonstrated due diligence in attempting service that would warrant permitting service by publication. Accordingly,

IT IS FURTHER ORDERED that Plaintiffs shall have until **May 25, 2011**, to complete service upon Defendant Mary Muso.

DATED this 25th day of January, 2011.

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